

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**MATTHEW GILMER,**

**Plaintiff,**

**v.**

**T.R. FRANKLIN, INC. d/b/a  
TIN ROOF II or TIN ROOF 2, JASON  
SHEER, KYLE McPHEE, GREG  
ROMINE, LARSEN McCOLL  
PARTNERS, LP, SMW CAROTHERS,  
LLC, NDG CAROTHERS LLC,  
NDG PROPERTIES, INC., GREGORY  
HANSON, STEWART CROSS, JOSHUA  
EDWARDS, and IAN HERRIN,**

**Defendants.**

**No. 3:10-cv-0969**

**JUDGE CAMPBELL**

**MAGISTRATE JUDGE BROWN  
JURY DEMAND**

**AFFIDAVIT OF CHARLES LEROY NORTON, JR.**

**COMES NOW** Charles Leroy Norton, Jr., being duly sworn according to law, who would depose and state as follows:

1. I am and at all times material to the above case have been the President of NDG Properties, Inc.

2. NDG Properties, Inc. is and at all times material to this case was the property manager of the shopping plazas and parking lot where the Tin Roof II is located and where the incident occurred in this case.

3. Prior to October 17, 2009, Defendant NDG Properties, Inc. had no reason to reasonably foresee, and did not foresee, a major violent incident occurring at its two Carothers shopping plazas including the property where the incident happened in this case and had not experienced any similar episodes to the one claimed in this case.

4. Prior to October 17, 2009, NDG Properties, Inc. had not been made aware of any criminal activity on or near the said property or any incidents similar to the one involved in this case by any person or entity or any other security concerns.

5. There were no known similar incidents of violence in or around the two plazas during their approximately two to three years of operation.

6. NDG Properties Inc.'s security measures that were in place were reasonable under the circumstances and met the accepted standard of care owed by a property manager to its invitees to protect invitees from harm. Those security measures included frequently monitored exterior lighting which was adequate, trimmed shrubbery and weekly inspections or observations of the property by management.

7. This affidavit is made on the basis of my personal knowledge.

**FURTHER AFFIANT SAITH NOT.**

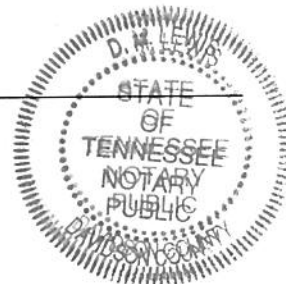
  
\_\_\_\_\_  
**CHARLES LEROY NORTON, JR.**

**STATE OF TENNESSEE ]**  
**COUNTY OF DAVIDSON ]**

Sworn to and subscribed before me, the undersigned Notary Public, this 20<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires: 1-16-14



### **CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of September, 2012 a copy of the forgoing Affidavit of Charles Leroy Norton, Jr. was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system. The parties to be served are as follows:

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/s/ Warren M. Smith  
**WARREN M. SMITH**